

**Internal Revenue Service**

**Department of the Treasury**

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

Employer Identification Number:

Key District:

Form Number:

Tax Years: All Years

Accounting Period Ending:

Dear Applicant:

This is a final adverse ruling as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

This ruling is made for the following reasons:

You have failed to establish that you are operated exclusively for charitable purposes under section 501(c)(3) of the Code. Furthermore, you serve private interests more than incidentally.

Contributions to your organization are not deductible under Code section 170.

You are required to file federal income tax returns on the above form. Based on the financial information you furnished, it appears that returns should be filed for the tax years shown above. You should file these returns with your key District Director for exempt organization matters within 30 days from the date of this letter, unless a request for an extension of time is granted. Returns for later tax years should be filed with the appropriate service center as indicated in the instructions for those returns.

If you decide to contest this ruling under the declaratory judgment provisions of section 7428 of the Code, you must initiate a suit in the United States Tax Court, the United States Claims Court, or the District Court of the United States for the District of Columbia before the 91st day after the date that this ruling was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Processing of income tax returns and assessment of any taxes due will not be delayed because a declaratory judgment suit has been filed under Code section 7428.

[REDACTED]

In accordance with section 6104(c) of the Code, the appropriate State officials will be notified of this action.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown above.

Sincerely yours,

[REDACTED]  
Director, Exempt Organizations  
Technical Division

[REDACTED]

EIN: [REDACTED]  
Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated on [REDACTED]. Your Articles state your purposes are to include, but are not limited to the following:

1. Promote balanced nutritional meals at each child care facility in the program for all children attending each facility.
2. Provide child care for those who qualify under the government child care and nutritional program.
3. Provide advertisement to the general public concerning the opportunities available for child care to those who qualify under the government child care and nutritional program.
4. Provide advertisement to the general public concerning the opportunities available for individuals wanting to become licensed child care facility under the government child care program.

The Articles state that you cannot carry on any other activity not permitted to be carried on by a corporation exempt from federal income tax under section 501(c)(3) of the Code.

In your application you stated you were formed to provide an in-house daycare nutrition program to day care providers. The activity is conducted by your founder who is also one of your directors. In addition to being a sponsoring organization you stated you would (1) locate parents in need of day care and place the children in registered home day care facilities sponsored by you; and (2) locate and register individuals wanting to start a home day care facility.

[REDACTED]

You have [REDACTED] members of your Board of Directors. All [REDACTED] are related and at least one is an employee. Your founder, [REDACTED], who is your employee, is a life-time member of the Board. [REDACTED] is your Board President and your chief operating officer. Your application indicates that she will be paid a salary of \$[REDACTED] per year. You do not have a community based Board of Directors that will supervise your program, set compensation, and insure that you are operated for charitable purposes and not for the private benefit of individuals.

You have not restricted your Board members from voting on compensation for themselves or for related persons. You did not make a majority of your Board nonsalaried and unrelated to salaried personnel. You also stated compensation is based upon the volume of business.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for educational purposes as long as, among other conditions, no part of the net earnings inure to the benefit of any private individuals or shareholders.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations states, in part, that if an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(a)(1) of the regulations require that the organizational purposes be specified in the Articles and that the purposes specified be one or more of the purposes set out in section 501(c)(3).

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provide that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- "(a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more except purposes."

Section 1.501(c)(3)-1(c)(1) of the regulations states, in part, that an organization will not be operated exclusively for exempt purposes if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations states, in part, that an organization is not operated exclusively for exempt

purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the regulations states, in part, that the words "private shareholders" refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations, in part, states that an organization is not organized or operated for exempt purposes unless it serves a public rather than a private interest. To meet this requirement it is necessary that the organization establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, or shareholders of the organization.

In Better Business Bureau of Washington, DC v. United States, 326 U.S. 279 (1945) it was held that the presence of a single non exempt purpose if substantial in nature, will preclude exemption under section 501(c)(3) of the Code, regardless of the number or importance of statutorily exempt purposes.

In order to qualify under section 501(c)(3) of the Code, an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Your purposes, as stated in your Articles, are broader than section 501(c)(3) purposes. You do not meet the organizational requirements of section 501(c)(3).

You will be operating an in-house nutrition program for day care providers, and your founder will be conducting the operations. She will receive compensation as set by herself and related Board members. You appear to be operating for the private benefit of your founder and in the same manner as an ordinary commercial concern. To meet the operational test, an organization must be engaged in activities furthering "public" purposes rather than private interests. Based on the above you have not shown that you are operated for "public" purposes rather than operated for the benefit of your founder in contravention of section 501(c)(3) of the Code.

Accordingly, we have concluded that you are neither organized nor operated exclusively for exempt purposes and are not entitled to exemption under section 501(c)(3) of the Code.

Donors may not deduct contributions to you under section 170 of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

Chief, Exempt Organizations  
Rulings Branch 2

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[REDACTED]

bcc: DD, Dallas  
Attn: EO Group

bcc: State Officials  
State of [REDACTED]

bcc: [REDACTED]

Initiator

Reviewer

Reviewer

Reviewer

Reviewer